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Resource Law Notes: The Newsletter of the Natural
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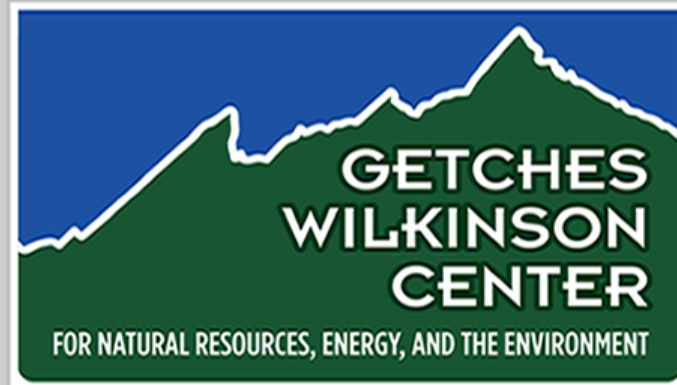
Resource Law Notes Newsletter, no. 1, Jan. 1984

University of Colorado Boulder. Natural Resources Law Center



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RESOURCE LAW NOTES: THE NEWSLETTER OF THE NATURAL RESOURCES LAW CENTER, no. 1, Jan. 1984 (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law).

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Resource Law Notes

The Newsletter of the Natural Resources Law Center
University of Colorado, Boulder • School of Law

Number 1 January 1984

An Introduction to the Center

This issue of Resource Law Notes marks a new phase for the Natural Resources Law Center. Founded in the fall of 1981 to consolidate the expanding activities and plans of the University of Colorado Law School in the areas of water law, public land law, environmental law, and mining and energy law, the Center's purpose is to facilitate research, writing and continuing education in natural resources law.

Betsy Levin, Dean of the University of Colorado School of Law, considers the Natural Resources Law Center an important addition to the school.

"Because the Center is situated in this region, where mining, oil and gas, wilderness recreation and skiing are major issues and where there is competition for water, we feel we can make a real contribution by shedding light on these concerns—on the policy as well as the legal issues," according to Dean Levin.

Even before the Center was established, the School of Law was organizing annual natural resources law summer short courses. To date four programs have been presented:

- July 1980: "Federal Lands, Laws and Policies and the Development of Natural Resources"
- June 1981: "Water Resources Allocation: Laws and Emerging Issues"
- June 1982: "New Sources of Water for Energy Development and Growth: Interbasin Transfers"
- June 1983: "Groundwater: Allocation, Development and Pollution"

In addition, the Center has sponsored other programs such as a luncheon symposium in January 1983 on the U.S. Supreme Court water law decision in **Sporhase v. Nebraska** and another luncheon meeting in November 1983 on mandated contract carriage for natural gas pipelines. A two day workshop on the problems of special water districts, funded by a grant from the **William H. Donner Foundation**, was held in September 1983. A separate article in this newsletter describes the programs planned for June 1984.

The Natural Resources Law Fellows Program is another on-going activity of the Center. Under the Fellows Program, scholars and practitioners in the natural resources area are invited to spend a semester in residence at the Law School. An opportunity is provided for scholarly research and writing on a topic of particular interest to the participant. Discussions of work in progress with faculty and students, as well as other topics of interest may be expected in both formal and informal sessions.

In 1982-83 the Center was host to two international Fellows. In the fall, **Ms. Karin Bateld**, a political science doctoral student from the University of Linköping, Sweden, studied water conflict resolution with **Professor James N.**

Corbridge, Jr. In Sweden Ms. Bateld was studying Baltic Sea pollution and the political differences of the seven countries which border that body of water. At the University of Colorado, she concentrated on the law of the Colorado River and water treaties between the U.S. and Mexico.

In the spring, **Adrian Bradbrook**, Reader-in-Law from the University of Melbourne, Australia, studied the legal aspects of alternative energy sources, such as solar and wind generation. Since returning to Australia, Dr. Bradbrook has produced three articles the Center hopes to publish: "Nuisance and the Right of Solar Access," "Tortious Liability for the Operation of Wind Generators," and "The Access of Wind to Wind Generators."

Jon Mulford, Esq. will be in residence at the School of Law as a visiting fellow during the spring 1984 semester. (See article in this newsletter on his proposed research.)

The Natural Resources Law Center also sponsors a Distinguished Visitors Program which brings prominent individuals in the natural resources field to the School of Law for short periods (one or two days). These visitors share their knowledge and experience with faculty and students through formal presentations and informal discussions. In April 1983 **Senior U.S. Circuit Judge Jean Breitenstein**, who recently served as a special master for two water law cases before the U.S. Supreme Court, spent a day at the School of Law. Charles J. Meyers of Gibson, Dunn & Crutcher in Denver and former Professor and Dean at Stanford Law School will be a Distinguished Visitor at the School of Law during the spring semester, 1984.

As of mid-November 1983 the Center has a full-time director, **Larry MacDonnell** (see separate article). Dr. MacDonnell's education and experience are in both law and economics. He comes to the Center from the Denver Research Institute where he was involved in research primarily related to natural resources issues. As Center director, Dr. MacDonnell intends to seek opportunities for the faculty and students of the School of Law, as well as other departments of the University, to engage in funded research in the natural resources area.

Kathy Taylor, who has been with the Center since September 1982, continues as executive assistant. She has coordinated the Center's many activities during this period, including implementing several major conferences. As the Center's activities expand, her experience and skills will be invaluable.

The newsletter will be published several times a year and will provide current information about our programs and activities. In later issues we expect to introduce substantive articles based on on-going research and writing. We also expect to include interviews with prominent practitioners and scholars in the natural resources area, as well as with government and industry representatives.

Fund Raising Campaign Features Challenge Grant

Almost half of the \$500,000 goal to earn a challenge grant for the Natural Resources Law Center has been raised during the first 18 months of a five-year campaign. **Marvin Wolf** of Wolf Energy in Denver and a 1954 graduate of the Law School has offered a challenge grant of \$250,000 if the Law School can match his offer two dollars for one.

Managing the campaign is **Clyde Martz** of the Denver law firm of Davis, Graham & Stubbs. Martz, a former acting dean and faculty member of the Law School and author of *Cases and Materials on the Law of Natural Resources*, heads a committee of 16 volunteers soliciting gifts from alumni, corporations, foundations, law and accounting firms, banks and other donors.

Of the contributions received to this point, 23 have come from individuals, 17 have come from resource corporations, accounting and law firms, banks, and 7 from other sources.

Funds will be used to expand the activities of the Center. In addition to sponsoring national conferences on natural resources law topics, the Center seeks to enlarge its offerings of short courses and workshops as well as to develop a significant program of research. Funds will be used to enhance the Natural Resources Law Fellows Program and the Distinguished Visitors Program.

For further information regarding the fund-raising effort, please contact the Law School Director of Development, **Barbara Allar**, at 303-492-8047.

Center Sponsors Contract Carriage Symposium

On November 4, 1983, the Natural Resources Law Center sponsored a luncheon symposium, "The Regulatory Status of Natural Gas Pipelines as Carriers After Deregulation of Wellhead Prices," at the downtown Denver Marriott Hotel. The principal speaker was **Robert C. Means**, Chief of the Office of Regulatory Analysis of the Federal Energy Regulatory Commission. Mr. Means presented the technical analysis behind the Reagan administration's support for requiring that natural gas pipelines be required to act as common carriers in the transportation of natural gas. The major argument favoring the imposition of common carrier status on pipelines is that it would encourage greater competition in the marketing end. Mr. Means' presentation concentrated on the regulatory issues raised by the imposition of common carrier status. He discussed technical matters relating to pipeline capacity, appropriate tariffs, and the scope of the common carriage obligation. In his view, these are issues which can be adequately addressed in devising such a system. Furthermore, he argued that a common carrier approach would result in lower overall gas costs. However, he noted that the major beneficiaries will be the large purchasers; lower load customers will likely face increased prices.

Following Mr. Means, **Professor Stephen F. Williams** of the University of Colorado School of Law and currently Visiting Professor at Southern Methodist University School of Law discussed the mandated contract carriage approach. He suggested that the fundamental arguments underlying this approach may be erroneous. The anomalous situation in 1982 when gas prices rose in the face of an apparent oversupply cannot be attributed to some form of monopoly behavior by the pipelines. Indeed, in his view it is not clear that pipelines should be characterized as monopolies.

Mandated contract carriage is a move in the direction more rather than less regulation. Professor Williams stressed that there may be better alternatives such as removing federal regulation in this area and allowing the state to assume a more active role.

Legislation in the Senate, including provision for mandated contract carriage, was defeated on the floor in this session. For the moment this issue has been set aside. However, it is likely to appear again in the next legislative session. Further research on the issues raised in this symposium appears warranted.

Workshop Tackles Special Water District Problems

In September 1983, the Natural Resources Law Center conducted a two day workshop on the Problems of Special Water Districts, funded by a grant from the **William Donner Foundation**.

"In the West, special water districts wield significant political power and wealth because of the vital nature of water resources and the advantages a special district often enjoys as both a public agency and private enterprise," according to **David H. Getches**, Associate Professor of Law at the University of Colorado and recently appointed director of the Colorado Department of Natural Resources. Getches and co-chairman **Professor James Corbridge** planned the workshop before Getches took a leave from the Law Faculty to join **Governor Richard Lamm's** cabinet.

Natural Resources Law Center Adv

Clyde O. Martz, Esq., Chairman
Davis, Graham & Stubbs, Denver; former Solicitor, U.S. Dept. of the Interior; former Assistant Attorney General, Land Division, U.S. Dept. of Justice; former Professor of Law, University of Colorado.

John U. Carlson, Esq.
Holland & Hart, Denver, water law practice; adjunct professor of water resources law at the University of Colorado.

Stanley Dempsey, Esq.
Arnold & Porter, Denver, on leave from AMAX, Inc; former Vice President of AMAX, Inc., and Chairman of AMAX Australia, Ltd; CU Law Alumnus.

Hubert A. Farbes, Jr., Esq.
Conover, McClearn, Heppenstall & Kearns, Denver; former Colorado Assistant Attorney General, Natural Resources Section; member, Technical Advisory Board, National Wildlife Federation Clinic.

Guy R. Martin, Esq.
Perkins, Coie, Stone, Olsen & Williams, Washington D.C.; former Assistant Secretary, U.S. Dept. of Interior, Land and Water Resources; former Alaska Commissioner of Natural Resources; CU Law Alumnus.

Professor Ruth Maurer
Assistant Professor of Mineral Economics, Colorado School of Mines;

faculty intern at IntraWest; Denver; writer for Coloradoan; mayor of Golden.

Charles J. Meyers, Esq.
Gibson, Dunn & Crutcher, former Dean and Langley Stanford Law School; author of *Water and Gas Law and Water Resource Management*.

Raphael Moses, Esq.
Moses, Wittemyer, Heppner, Woodruff, Boulder; author of numerous articles on water law. CU Law Alumnus.

Laurence Moss
Consultant on energy and environmental matters; former President of the Sierra Club.

Robert Pasque, Esq.
Manager of Lands, Citicorp Corporation; has worked for state Oil Compact Commission, Rocky Mountain Oil and Gas Association, Western Oil and Gas Association and the Independent Producers Association of America.

David Phillips, Esq.
Executive Director, Rocky Mountain Mineral Law Foundation; former counsel, Wolf Ridge Corp. and exploration manager, Carter Oil Co. and Humboldt Refining; CU Law Alumnus.

Professor Robert E. Siev
Director, Cooperative Institute for Research in Environmental Sciences;

Special water districts were formed to promote irrigation and spur development in the arid West. They are so diverse in origin and organization that knowledge and understanding of the facts and issues concerning districts are lacking. Even statistical data are meager. Major questions abound, such as: Are special district appropriate entities to cope with the evolving needs of the West, marked by increased movement away from agricultural water uses and toward municipal and industrial uses? What are the problems for special districts created by changing federal policies towards new or expanded water projects and pricing of water from existing projects?

Four background papers were prepared for the workshop:

- "Special Water Districts—the Historical Background," by John D. Leshy, Professor of Law, Arizona State University;
- "Political Provision of Water: an Economic/Public Choice Perspective," by Dwight R. Lee, Center for Study of Public Choice, George Mason University;
- "Water System Entities in California: Social and Environmental Effects," by Merrill R. Goodall, Professor Emeritus, Claremont Graduate School and John D. Sullivan, Pitzer College, Claremont;
- "Discretion v. Accountability: the Case of Special Districts," by Professor Timothy De Young, Division of Public Administration, University of New Mexico.

Invited participants were selected to represent water districts, public interest groups, academia, and the federal and state governments. In addition, an effort was made to

represent as many of the western states as possible. To do this and yet retain a small enough group for good discussion (about 35 people) required very careful selection. At the workshop nine states plus the federal government were represented.

The first day, representatives of water districts and of governments identified the issues facing districts from the hands-on perspective of managers and regulators. The second day, academicians from law, public administration, economics, public choice and political science gave their views on how the problems of districts might be approached. The fruitful discussion that ensued led many participants to request that follow-up conferences be held on this same subject.

The Center is editing for publication the papers prepared for the workshop, plus selected material from the proceedings. These will be available soon and will be announced in a future newsletter.

MacDonnell Named New Director of Center



Larry MacDonnell

Lawrence J. MacDonnell has been appointed Director of the Natural Resources Law Center effective November 14, 1983. MacDonnell's educational background includes a J. D. from the University of Denver College of Law where he concentrated in natural resources law, and a Ph.D. in Mineral Economics from the Colorado School of Mines. His undergraduate training was at the University of Michigan, where he majored in political science.

Most recently, MacDonnell has been a research economist with the Denver Research Institute (DRI), where he directed and conducted a variety of research projects involving energy and resource issues. His last project at DRI was an analysis of the full economic costs, including the nonmarket social costs, of importing oil from foreign sources. Other projects included an analysis of changes in railroad transportation costs for coal resulting from the Staggers Act and subsequent ICC implementation efforts; an analysis of alternative lifeline rate structures for electricity; an examination of the effects of U.S. policies on technological innovation in the U.S. economy; and an evaluation of the socioeconomic effects of a large proposed oil shale project in western Colorado including appropriate mitigation measures. He also was an adjunct professor in the Graduate School of Business and Public Administration at the University of Denver where he taught a course in energy and environmental regulation.

Previously, MacDonnell has been an Assistant Professor at the Colorado School of Mines where he taught primarily graduate level courses in macroeconomics, environmental economics, mineral operating transactions, and natural resources policy. He worked as a consultant to the Committee on Interior and Insular Affairs of the U.S. House of Representatives in matters relating to the public lands minerals access system. He was an intelligence officer in the U.S. Air Force. He has been a member of the Colorado Bar since 1972.

In addition to his educational and professional involvement in the natural resources area, MacDonnell avidly uses and enjoys the outdoors. He has climbed extensively in the U.S., Canada and Peru. He instructed courses for the Colo-

Sciences (CIRES) University of Colorado; Professor of Chemistry; former Senior Scientist at the Aerospace Research Labs, Wright-Patterson Air Force Base, Ohio.

Professor Ernest E. Smith

Professor and former Dean of University of Texas School of Law; former member, Legal Committee of the Interstate Oil Compact Commission; author, *Cases and Materials on Oil and Gas*.

Leo N. Smith, Esq.

Verity, Smith & Kearns, Tucson, mining law practice; Supplement author: **American Law of Mining**; CU Law Alumnus.

Professor A. Dan Tarlock

Professor of Law, Chicago/Kent Law School, Illinois Institute of Technology; author of **Selected Legal and Economic Aspects of Environmental Protection, Environmental Law & Policy, Water Resource Management, Land Use**

Professor Gilbert F. White

Professor Emeritus of Geography, University of Colorado; Project Director, Natural Hazards Research and Applications Information Center of the Institute of Behavioral Science, Boulder; former President of Haverford College and Chairman of United Nations Panel on Integrated River Development.

Marvin Wolf, Esq.

Owner of Wolf Energy Company, Denver; CU Law Alumnus.

Representative Ruth M. Wright

Colorado House of Representatives, Committee on Agriculture, Livestock and Natural Resources; formerly on State Water Pollution Board; CU Law Alumna.

FACULTY ADVISORY COMMITTEE

Betsy Levin

Dean, University of Colorado, School of Law

James N. Corbridge, Jr.

Professor of Law

David H. Getches

Associate Professor of Law (on leave). Director, State of Colorado Department of Natural Resources

Stephen F. Williams

Professor of Law (on leave). Visiting Professor Southern Methodist University School of Law

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rado Outward Bound School. He is an active jogger and backpacker. An enthusiastic companion on many of his outings these days is his eight year old daughter, Megan.

Jon Mulford Appointed to Visiting Fellow Position

The Natural Resources Law Center is pleased to announce the appointment of **Mr. Jon K. Mulford, Esq.**, as a Fellow for spring semester 1984. Mr Mulford is a graduate of the University of Colorado School of Law (1966) and has a legal practice in Aspen and Denver.

Mr. Mulford will conduct basic legal research on the Bureau of Land Management (BLM) program for land sales and exchanges under Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA). The BLM is now beginning to issue final Resource Management Plans as required by FLPMA. These land use plans will guide future federal land transfers.

Among some of the questions Mr. Mulford intends to address are the following: To what extent do the land tenure components of the new plans reflect policy of the new administration as distinguished from the intent of Congress embodied in FLPMA? Do the decisions being made now at the resource area level reflect Congressional intent as set out in FLPMA, or should BLM land tenure policy be redirected by new legislative action? How will land tenure decisions now being made affect user-group access to the public lands?

Results of this research will be presented at the FLPMA conference in June, 1984.

Summer Program Offers Water Rights, FLPMA Courses

The Natural Resources Law Center will offer two summer short courses in June 1984. The first—June 6-8—will focus on the FEDERAL LAND PLANNING AND MANAGEMENT ACT (FLPMA). Current issues regarding land sales and exchanges, withdrawals, wilderness designation, access, multiple use and the planning process and other topics will be covered.

The second program—June 11-13—continues the Center's series on water law, this time with a look at the FEDERAL IMPACT ON STATE WATER RIGHTS. Topics will

include discussions of federal reserved water rights, Indian water rights, and federal environmental laws affecting water development.

Program specifics will be available soon from the Center.

Publications of the Natural Resources Law Center

- "Groundwater: Allocation, Development and Pollution" 450 page notebook of outlines and materials from 4-day June 1983 water law short course. \$55
- "New Sources of Water for Energy Development and Growth: Interbasin Transfers" 645 page notebook of outlines and materials from 4-day June 1982 water law short course. \$55
- "Contract Solutions for the Future Regulatory Environment" 434 page notebook of outlines and materials from Natural Gas Symposium, March 1983. \$25
- "Implied Covenants in Oil and Gas Leases" reprint of two articles by Stephen F. Williams, Professor of Law, University of Colorado. 40 pages. \$4.50

Forthcoming soon:

- "Problems of Special Water Districts" - papers from the workshop held by the Natural Resources Law Center, Sept. 1983
- Reprints of three articles by Adrian Bradbrook, Reader in Law from the University of Melbourne, Australia: "Nuisance and the Right of Solar Access" "Tortious Liability for the Operation of Wind Generators", "The Access of Wind to Wind Generators"